

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

In Proceedings
Under Chapter 7

ROBERT J. LIGON

Case No. 00-40426

Debtor(s).

ORDER

This matter is before the Court on the motion of creditor, Nutritional Resources ("Nutritional"), to extend the time for filing its discharge and dischargeability complaint against the debtor, Robert Ligon. Nutritional seeks an extension of one day, asserting that it mailed its complaint within sufficient time to meet the deadline for filing such complaints¹ but that, "for reasons unknown," the complaint did not arrive in the clerk's office until one day after such deadline had passed.

The deadline for filing discharge and dischargeability complaints in the debtor's bankruptcy case was June 13, 2000. Counsel for Nutritional states that she mailed the complaint on June 7, 2000. However, it was not received and filed-stamped by

¹In its complaint, Nutritional seeks a determination that the debtor's obligation to Nutritional be found nondischargeable under 11 U.S.C. §523(a)(4) and, further, objects to the debtor's discharge under 11 U.S.C. §727(a)(2) and (a)(3). The time for filing such a complaint was 60 days after the first date set for the § 341 creditors' meeting. See Fed. R. Bankr. P. 4004(a), 4007(c).

the clerk's office until June 14, 2000.

The debtor opposes Nutritional's motion to extend, arguing that under Bankruptcy Rules 4004(b) and 4007(c) setting forth the time for filing discharge and dischargeability complaints, any motion to extend must be filed before the time for filing such complaints has expired. Nutritional, for its part, concedes that it has no supporting authority for its motion to extend.

Rule 4004(b) provides that the court may extend the time for filing a complaint objecting to discharge but further specifies that such motion "shall be made before the time has expired." Fed. R. Bankr. P. 4004(b). Similarly, Rule 4007(c) setting forth the time for filing dischargeability complaints under § 523(c) explicitly states that a motion to extend the time fixed "shall be made before the time has expired." Fed. R. Bankr. P. 4007(c). In addition, Rule 9006(b)(3), pertaining to the enlargement of time periods generally, states that the court may enlarge the time for taking action under Rules 4004(a) and 4007(c) "only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3).

Rules 4004(b) and 4007(c), by their express terms, do not allow for the filing of a motion to extend time after the deadline for filing discharge and dischargeability complaints has expired. Here, although Nutritional's complaint was filed

only one day late, Nutritional did not seek an extension of the time for filing such complaint before expiration of the period and, indeed, did not file the present motion to extend until June 29, 2000, over two weeks

beyond the deadline of June 13, 2000. This Court has previously held that the provisions of Rule 4007(c) are mandatory and do not allow the Court any discretion to grant a late-filed motion to extend time to file a dischargeability complaint. See In re Barnes, 114 B.R. 579, 581 (Bankr. S.D. Ill. 1990). This reasoning applies equally to Rule 4004(b) motions to extend time for filing a complaint objecting to discharge. See In re Klein, 64 B.R. 372, 374 (Bankr. E.D. N.Y. 1986); In re Lane, 37 B.R. 410, 414 (Bankr. E.D. Va. 1984).

For the reasons stated, the Court finds that it is without authority to extend the time for Nutritional to file its discharge and dischargeability complaint against the debtor. Accordingly, Nutritional's motion to extend will be denied.

SEE WRITTEN ORDER.

ENTERED: August 8, 2000

/s/ KENNETH J. MEYERS
UNITED STATES BANKRUPTCY JUDGE